Supreme Court, U.S.
FILED
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No. ____

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**In The**
**SUPREME COURT OF THE UNITED STATES**

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TAMMY A. HILVETY, BRYAN HILVETY
BEVERLY R. HILVETY and MARK HILVETY

**Petitioners,**

**v.**

COMMISSIONER OF INTERNAL REVENUE.

**Respondent.**

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**On Petition For Writ of Certiorari To The**
**United States Court of Appeals**
**For The Seventh Circuit**

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# PETITION FOR WRIT OF CERTIORARI

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3688

## QUESTION(S) PRESENTED

1. **Whether a Statutory Notice of Deficiency mailed according to 26 U.S.C. § 6211, 6212 and 6213, claiming a deficiency owed the United States, must put each Petitioner on notice as to the identity of the specific provision or provisions of the Internal Revenue Code which the Commissioner's "increase in tax" notice is based?**

2. **Whether the Commissioner's Notice of Deficiency must be based upon Statutory provisions enacted by Congress?**

3. **Whether the Commissioner's failure to allege in its Notice of Deficiency the specific provision it concludes triggered its claimed increase in tax portion of its Notice of Deficiency is a Notice that lacks foundation, is arbitrary and is in direct violation of the Due Process clause of the Fifth Amendment to the Constitution?**

4. **Whether the order imposing sanctions should be vacated?**

5. **Whether the "Mack" order entered on December 12, 2001, which takes a simple effort of the Supreme Court to impose a filing fee on Anderson, extending it so far out of bounds, putting in the very Judges who impose a "sanction" the right to prohibit any litigant from any future justice without paying $ 8000 dollars in filing fee sanctions, violates the First Amendment right to redress under the circumstances of this case as well as the equal access and equal protection clauses of the Constitution?**

## LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

[ ]All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgement is the subject of this petition is as follows:

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## PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully pray that a Writ of Certiorari issue in review of the judgement below.

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## OPINIONS BELOW

The orders of the United States Tax Court appear beginning at Appendix to the petition. App.at 1

The orders of the United States Court of Appeals for the Seventh Circuit appear beginning at Appendix to the petition. App. at 10

The order of the Supreme Court of the United States extending Petitioners' time to file their consolidated/joint Petition for Writ of Certiorari appear at Appendix to the petition. App. at 15

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## JURISDICTION

The date the United States Tax Court issued it order involving Tammy A Hilvety; January 17, 2001.

The date the United States Tax Court issued it order involving Brian Hilvety; January 17, 2001.

The date the United States Tax Court issued it order involving Mark Hilvety; January 17, 2001.

The date the United States Court of Appeals for the Seventh Circuit Affirmed Tax Court's Orders; October 17, 2001.

The date the United States Court of Appeals issued its Mack order; December 12, 2001.

The date the Supreme Court of the United States extended the time period in which Petitioners could file their Petition for Writ of Ceritiorari; January 29, 2002.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1651(a).

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## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constitutional Provisions involved is The Fifth Amendment specifically involving due process of law regarding governments claim and intent to obtain property belonging to Petitioners without following deficiency procedures.

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## THIS PETITION IS IN AID OF APPELLATE JURISDICTION

*

## STATEMENT OF THE CASE

This case begins with the Commissioner of the Internal Revenue Service initiating Notice of Deficiency procedures on November 6, 1998 against Ruth Hilvety, Tammy A. Hilvety, Brian L. Hilvety, Beverly R. Hilvety, and Mark Hilvety. Ruth Hilvety became deceased during this litigation with a sudden stroke. Ruth Hilvety's husband died just prior to the Commissioner mailing its Notices of Deficiencies to the four remaining Petitioners identified in the caption of the tax court case.

Although Petitioners did timely petition the United States Tax Court for a redetermination of the Commissioner's Notice of Deficiency, Petitioners do not believe the law should consider them to have brought this action in tax court. The Commissioner of the Internal Revenue made the first move in this action and tax court procedures labeling Petitioners as "petitioners" instead of "respondent" is not adequate to pronounce the initiator or claimant.

On October 26, 2000, the Honorable Tax Court Judge John O. Calvin determined Ruth Hilvety "deceased" and entered an order against her for lack of prosecution.

On January 17, 2001, the Honorable Tax Court Judge John

O. Calvin entered orders of redetermination against Tammy A. Hilvety, Brian L. Hilvety and Mark Hilvety, and in the Commissioner's favor. Beverly Hilvety was determined correct in her Petition as to not owe any of the deficiency increase alleged by the Commissioner yet she was also sanctioned..

Petitioners' filed a Notice of Appeal to the Seventh Circuit Court and on October 17, 2001, the Seventh Circuit entered an order affirming the Tax Court decisions and imposing sanctions of $ 8000.00 upon all four Petitioners involved in the appeal.

On December 12, 2001, the Seventh Circuit entered an additional order prohibiting Petitioners from filing any pleading in any United States District Court until $ 8,000.00 in sanctions is paid as ordered in the October 17, 2001, order, referred to as a "Mack" order.

## REASONS FOR GRANTING THIS WRIT

1. **Petitioners' claim a Statutory Notice of Deficiency claiming a deficiency owed the United States must put Petitioners on notice as to the identity of the specific provision or provisions of the Internal Revenue Code which the Commissioner's "increase in tax" notice is based.**

Neither the Commissioner of the Internal Revenue, Judge Calvin, nor Judges at the Seventh Circuit made any specific identification contained in the Commissioner's Notice of Deficiency identifying any code section in the Internal Revenue Code triggering the increase in tax portion of the Notices mailed Petitioners. This must not be oversight because it occurred on each Notice of Deficiency served on each Petitioner, is absent in each of the orders issued by the tax court and is clearly not present in the decision rendered by the Seventh Circuit Court of Appeals.

26 U.S.C. § 6211 defines the meaning of "deficiency" as can only be meant by the Commissioner when exercising its authority to issue a Notice of Deficiency pursuant to section 6212. Section 6211

reads:

> "For purpose of this **title** in the case of income, estate, and gift taxes imposed by subtitle A and B and excise taxes imposed by chapters 41, 42, 43, and 44 the term '*deficiency*' means the amount by the tax imposed by subtitle A or B, or chapter 41, 42, 43 or 44 exceeds the excess of-(1) the sum of: (A) the amount shown as the tax by the taxpayer upon his return..."

Section 6212 reads:

> "Notice of Deficiency. (a) In General.- If the Secretary determines that there is a deficiency in respect of any tax imposed by subtitle A or B or chapter 41, 42, 43, or 44, he is authorized to send notice of such deficiency to the taxpayer by certified mail or registered mail."

Petitioners' claim the Notice of Deficiency did not have its "foundation" in respect of any tax imposed by Subtitle A or B or chapter 41, 42, 43 or 44. Petitioners demanded the Tax Court deny the inaccurate and incomplete claim made by the Commissioner because of the failure of the Notice of Deficiency to identify which tax imposed by which subtitle and/or chapter imposed the amount of the claimed deficiency alleged in each Notice of Deficiency served on Petitioners. The Tax Court found this "frivolous." The Commissioner did not support his claimed "increase in tax" with a smidgeon of a hint as to the statute deriving his deficiency claims.

There is no question the Tax Laws are complex. See *U.S. v. Hilgeford*, 7F.3d 1340 (7th Cir. 1993)("to avoid penalizing taxpayers who make innocent mistakes caused by the ***complexity of the tax code***"); See also *U.S. v. Cheek*, 931 F.2d 1206 (7th Cir. 1991) ("misunderstandings resulting from the complexity of the statutory scheme")*Weisbart v. U. S. Dept. of Treasury*, 222 F.3d 93, 94 (2nd Cir. 2000)("Judge Learned Hand once described the Tax Code as a 'fantastic labyrinth[]' whose words 'merely dance before my eyes in a meaningless procession: cross-reference to cross-reference, exception upon exception. . . .' *Learned Hand,*

*Thomas Walter Swan*, 57 Yale L.J. 167, 169 (1947))

26 U.S.C. § 6861 contains language which clearly supports the need for the Commissioner proceeding according to the law. Jeopardy assessments of income, estate, gift, and certain excise taxes, notwithstanding the provisions of section 6213(a), immediately allows assessments of a deficiency (together with all interest, additional amounts, and **additions to the tax provided by law**)..."

See also *Graham & Foster v. Goodcell*, 282 U.S. 409, 416-420 (1931) (holding that a statutory provision "was manifestly intended to operate retroactively according to its terms" where the tax statute spelled out meticulously the circumstances that defined the claims to which it applied and where the alternative interpretation was absurd); *Automobile Club of Mich. v. Commissioner*, 353 U.S. 180, 184 (1957) (finding a clear statement authorizing the Commissioner of Internal Revenue to correct tax rulings and regulations "retroactively" where the statutory authorization for the Commissioner's action spoke explicitly in terms of "retroactivity"); *United States v. Zacks*, 375 U.S. 59, 65-67 (1963) (declining to give retroactive effect to a new substantive tax provision by reopening claims otherwise barred by statute of limitations)

The Commissioner's Notice of Deficiency is fatally flawed and the Tax Court's decision as affirmed by the Seventh Circuit on dismissal for "lack of prosecution" is highly illegal. It was not a frivolous claim that the Notice should contain the provisions of the law which the Commissioner's claim was based regarding the "increase in tax" portion of all claims made against each Petitioner. In order for this Court to subscribe to the Seventh Circuit's opinion it would have to totally disregard the language of section 6211, 6212 and 6213 as the Seventh Circuit did.

The Seventh Circuit decided that "Deficiency determinations are presumed correct, and the taxpayers bear the burden of proving otherwise." *7th Cir. Order @ 2* Stated in a footnote, the Seventh

Circuit determined that the 1998 amendment to the Internal Revenue Code, which shifts the burden of proof to the Commissioner in certain cases, I.R.C. § 7491, does not apply to this case.

Of course it does not apply in this case. Section 7491 excludes itself if "any other provision of this title provides for a specific burden of proof with respect to such issue." *See* 26 U.S.C. § 7491(a)(3) In making this statement the Seventh Circuit directed Petitioners to *Pittman v. Commissioner*, 100 F.3d 1308@ 1313(7th Cir. 1996), where in it stated:

> "As explained in Ruth, "[i]n certain quite limited circumstances . . . courts recognize that an assessment should not be accorded even a rebuttable presumption of correctness. For example, when the assessment is shown to be `without rational foundation' or `arbitrary and erroneous,' the presumption should not be recognized. . . . As long as the procedures used and the evidence relied upon by the government to determine the assessment had a rational foundation, the inquiry focuses on the merits of the tax liability, not on IRS procedures." 823 F.2d at 1094 (citations omitted). Thus, to rebut the presumption of correctness and shift the burden to the Commissioner, the taxpayer must demonstrate that the Commissioner's deficiency assessment lacks a rational foundation or is arbitrary and excessive. Id.; see also *Gold Emporium*, 910 F.2d at 1378. As discussed bel

Under this rationale, in order for the burden to shift to the Commissioner, the Petitioners were required to "demonstrate" that the Commissioner's deficiency assessment lacks a ***rational foundation or is arbitrary and excessive***." There can be no difference between claiming the Statutory Notice of Deficiency fails to identify any section in any of the subtitles or subsections to which a Notice of Deficiency must be based, then claiming it lacked any "rational foundation" or was "arbitrary." Petitioners attached as exhibit A to their Petitions the Commissioner's Notice of Deficiency.

The foundation of the Notice of Deficiency contained two

sections from title 26, the Internal Revenue Code. Sections 6651 and section 6654. Neither of these sections impose any tax or any increase in tax upon Petitioners. Section 6651 imposes a penalty for "willful failure to file a return" and section 6654 imposes a penalty of "interest" for underpayment. Why even have these sections listed in the Notice of Deficiency? Under the watchful eye of all those charged with protecting the "rule of law," thus far, no statutory authority should or need be required. Shouldn't the same rationale for why the Notice of Deficiency identifies statutory support for the interest and penalties claimed by the Commissioner be the rationale guide as to why the Commissioner must be required to notice Petitioners as to what particular command in the Internal Revenue Laws he claims supports his "increase in tax" portions.

Petitioners respectfully state that making a claim of law enforcement without supporting said claim by any section in the law would be far worse than claiming enforcement of the law "*ex post facto*." Certainly no one will dispute that fundamental due process regarding deprivation of property is that before the deprivation is to be allowed the person the Fifth Amendment is to protect must be given notice and an opportunity to be heard.

Heard about what? In this instance it would be whether the Petitioners agree with the facts alleged by the Commission and whether those facts support the law the Commissioner is trying to enforce. If Petitioners are to accept the judicial discourse given their process prior to deprivation they would have to agree that the law does not matter and the only thing that matters is what ever the government says that that is just the way it is.

The decisions entered by the anti-rule of law Tax Court and Seventh Circuit is so far removed form the "rule of law" that a fair comparison would be a speed limit sign with a circle around a question mark which directs the reader to a foot note which says "see highway patrol for further information."

This Court should send a message to the Commissioner that it has a duty to follow the law in its pursuit of enforcing same.

During the recent overhaul of the I.R.S. Senator Don Nickles was told by a Revenue Agent Larry Lakey that Agent Lakey was directed by his "group manager" to break the law to accomplish enforcement of the law.

Likewise, this Court should send a message to the Citizenry that even though it is so busy and can hardly keep up with the load, it can and will continue to prohibit any government agent from acting on the governments behalf, in pursuit of taking property without informing the Citizen challenged with the specific statutory authority being relied upon by the government's representative.

**2. The Commissioner's Notice of Deficiency must be based upon Statutory provisions enacted by Congress if it is to be compliant with section 6211, 6212 and 6213?**

There can simply be no doubt that if the Notice of Deficiency can only be a legal "deficiency," if it is a notice of a deficiency originating from "any tax imposed by subtitle A or B or chapter 41, 42, 43, or 44" then the Commissioner's words "increase in tax" does not go far enough to activate the deficiency procedures. *See* Sections 6211 and 6212 Again, the Commissioner refused, after several opportunities to disclose the specific provisions supporting the Notice of Deficiency, and thus failed to comply with section 6211 and 6212 requirements.

**3. The Commissioner's failure to allege in its Notice of Deficiency the specific provision it concludes triggered its claimed "increase in tax" assessment portion of its Notice of Deficiency is a Notice that lacks foundation, is arbitrary and is in direct violation of the Due Process clause of the Fifth Amendment to the Constitution?**

There can be no doubt that what is at issue in this case is the right to property. Does it belong to the government or does it belong to the Petitioners. "'Th[e] right to be heard has little reality or worth unless one is informed that the matter [affecting one's

property rights] is pending and can choose for himself whether to appear or default, acquiesce or contest.' It follows that when law enforcement agents seize property pursuant to warrant, due process requires them to take reasonable steps to give notice that the property has been taken so the owner can pursue available remedies for its return." *West Covina v. Perkins*, 525 U.S. 234, 240 (1999); Quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)

In this case the Notice of Deficiency is a form of "warrant" and triggers the "[D]ue process" which " is flexible and calls for such procedural protections as the particular situation demands." *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). This Court has recognized, on many occasions, that where a State must act quickly, or where it would be impractical to provide predeprivation process, postdeprivation process satisfies the requirements of the Due Process Clause. See, e.g., *United States v. James Daniel Good Real Property,* 510 U.S. 43, 53 (1993)

"The practice of ex parte seizure, moreover, creates an unacceptable risk of error. Although Congress designed the drug forfeiture statute to be a powerful instrument in enforcement of the drug laws, it did not intend to deprive innocent owners of their property. The affirmative defense of innocent ownership is allowed by statute. See 21 U.S.C. § 881(a)(7) ('[N]o property shall be forfeited under this paragraph, to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner')." *United States v. James Daniel Good Real Property*, 510 U.S. 43, 55 (1993)

"When a statute includes an explicit definition, we must follow that definition, even if it varies from that term's ordinary meaning. *Meese v. Keene*, 481 U.S. 465, 484-485 (1987) ("It is axiomatic that the statutory definition of the term excludes unstated meanings of that term"); *Colautti v. Franklin*, 439 U.S. at 392-393, n. 10 ("As a rule, `a definition which declares what a term "means" . . . excludes any meaning that is not stated'"); *Western Union*

*Telegraph Co. v. Lenroot*, 323 U.S. 490, 502 (1945); *Fox v. Standard Oil Co. of N. J.*, 294 U.S. 87, 95-96 (1935) (*Cardozo, J.)Stenberg v. Carhart*, 530 U.S. ___ (2000)

"The canon on imputing common-law meaning applies only when Congress makes use of a statutory term with established meaning at common law, and Carter does not point to any such term in the text of the statute." *Carter v. U.S.*, 530 U.S. ___ @ 7(2000) see also *Asgrow Seed Co. v. Winterboer*, 513 U.S. 179, 187 (1995) ("When terms used in a statute are undefined, we give them their ordinary meaning.").

In this case, Petitioners were claimed to owe the United States several thousand duplicated dollars and all they ask is according to which section or sections in the Internal Revenue Code. How could this Court ever examine the meaning of the statute if the Commissioner refuses to state what that statute is? By failing and now refusing to say what that specific provision or provisions are, the Commissioner is clearly saying we the government do not have to inform the Citizen as to what law passed by Congress we are pursuing the enforcement of.

Under this logic, the government does not need any statutory authority at all. Or maybe they just need the Citizens to trust that its there. What do you say to 18 year old students or students just graduating from college. Its the don't ask because we cannot and will not tell and this is because the Courts won't make us- theory. Why have a Tax Court anyway? It is just a rubber stamp for the government. It acts for the government, ask questions for the government, tells the government what to file, and tells the government you do not have to inform any Citizen of the statutory foundation (rationale) for any attempt to take or intend to take a Citizens property. If they ask, as this theory goes, tell them it is a stupid question. Currently, on the I.R.S. web page it tells the reader "***the only stupid question is a question you do not ask***." In this case, the Commissioner, the Tax Court Judge, the Attorneys at the Seventh Circuit, the Seventh Circuit Judges and most certain all those who have followed this case for the government would like

this Court to say that the questions raised by this appeal are stupid.

Petitioners' hope this Supreme Court of the United States, who is charged with keeping the government within the boundaries of the law, will send a message to all those involved in any process of imposing taxes on Citizens that says you (the law enforcer) must tell the Citizen the statutory basis for your intent to take that Citizens property and to which you are intending to "enforce."

The decisions of this case might have worked in the 17th and 18th Century. It may have even worked in the 19th and 20th Century. It will not work in a One World 21st Century. All the rest of the world would have to say is that at least they tell their Citizens what law they are relying upon to take their property. In America, our government attempts to look like they are acting according to the rule of law but they know, this Court knows, and Petitioners know, that the government is not following any rule of law with regard to the Deficiency procedures outlined by Congress and at issue herein.

**4. The order imposing sanctions should be vacated?**

The Seventh Circuit, after deciding that the Commissioner did not need a rationale foundation for its Notice of Deficiency mailed to each Petitioner, decided to impose a sanction of $ 2000 on each Petitioner. The Seventh Circuit then directed the Sanction be paid within 30 days. This of course knowing that Petitioners had 90 days to appeal their decision to this Court. The Sanction order is not entered because, as the Seventh Circuit Court says, that Petitioners are "merit less" and "frivolous," the order clearly was entered to embark a chilling blow on the demand Petitioners are making on their government. If you represent the executive branch of the Constitution then proceed according to law or proceed no further at all. To this the Seventh Circuit says "ridiculous." (Emphasis added of course)

This Court should at minimum overrule the Seventh Circuit's imposition of sanctions held against each Petitioner.

**5. The "Mack" order entered on December 12, 2001, takes a simple effort of the Supreme Court to impose a filing fee on Anderson and extends it so far out of bounds that it puts in the hands the very Judges who impose a "sanction" the right to prohibit any litigant from any future justice without paying $ 8000 dollars in sanctions.**

The Seventh Circuit Court of Appeals has issued a "Mack" order which was institutionalized by the decision in *Support Systems Int'l Inc. v. Mack*, 45 F.3d 185, (7th Cir. 1995) This decision states its basis is from this Supreme Court in *"In re Anderson*, 511 U.S. 364, 366 (1994)." A "Mack" order "directs the clerks of all federal courts in the circuit to return unfiled any papers that the litigant attempts to file, unless and until he pays in full the sanctions that have been imposed against him" (by the Court). The Seventh Circuit makes an exception for any criminal case in which Mack is a defendant and for any application for habeas corpus that he may wish to file. The same was accorded so graciously by the Seventh Circuit for all Petitioners in this case. Petitioner are so glad the Seventh Circuit, in policing its own orders, decided that writ of Habeas Corpus was not suspended.

Where is the logical stopping point to this tyranny. First the Court refuses to uphold the rule of law which it swore to uphold. Next it imposes a sanction because it found the demand for the rule of law merit less and frivolous. Continuing, it then decided to further punish the rights of Petitioners by directing that the Federal Courts are now out of bounds until Petitioners pay the extortionists' $ 8000. Maybe, in the future, people who owe the government any money at all, will just lose their rights to justice until they receive a "Payment in full, your rights are restored" stamp of approval from "lifetime appointed" government employees.

The power to tax is the power to destroy. In this case what the Supreme Court decided was a factor in deciding whether a person must pay a filing fee, published by rule 39, and has now grown into a $ 8000 filing fee for Petitioners. At least in Anderson this Court stayed uniform and articulated the fee the same as every

other person. In this case, the filing fee is $ 8000 and it is only for Petitioners. Certainly, this form of tax has no limitation, no rule to apply, no rule to appeal, and is the most heinous and arbitrary exercise of power a person in a free society could levy on one of its own Citizens.

"Any minimal savings in time or photocopying costs, it seemed to me, did not justify the damage that occasional orders denying in forma pauperis status would cause to "the symbolic interest in preserving equal access to the Court for both the rich and the poor." Ibid. Three years' experience under this Court's Rule 39.8 leaves me convinced that the dissenters in the cases the Court cites had it right. See *In re Demos*, 500 U.S. 16, 17-19 (1991); *In re Sindram*, 498 U.S. 177, 180-183 (1991); *In re McDonald*, 489 U.S. 180, 185-188 (1989). See *Day v. Day*, 510 U.S. 1, 3 (1993) (Stevens, J., dissenting). *In Re Anderson*, 511 U.S. 364, 366 (1994)

Once, JUSTICE MARSHALL dissented on this issue saying "[T]his Court's rules now embrace an invidious distinction. Under the amendment adopted today, an indigent litigant may be denied a disposition on the merits of a petition for certiorari, jurisdictional statement, or petition for an extraordinary writ following a determination that the filing "is frivolous or malicious." Strikingly absent from this Court's rules is any similar provision permitting dismissal of "frivolous or malicious" filings by paying litigants, even though paying litigants are a substantial source of these filings. *In Re Amendment to Rule 39*, 500 U.S. 13, 14 (1991)

If this Court does not say no to the Seventh Circuit on their "Mack" Truck, the collision of Mack, with the Constitution and where that crash will lead, can only be demonstrated in distances between the Anderson decision of the Supreme Court and where the Seventh Circuit has taken it in this case with Petitioners.

The Seventh Circuit justified their tortured reasoning based upon a total of three cases in 5 years which not all Petitioners were among. In *Hilvety v. World Power Sports* that case involved Brian Hilvety only. It was a case regarding the Fifth Amendment

deprivation of property of an employee which was taken a year in advance of when the government said the tax was due by the employer without the employees consent. *LaRue v. United States* involved a case where 36 Plaintiffs, after obtaining the waiver of the Sovereign Immunity of the United States authorizing maintenance of a suite, attempted to claim specifically, damages according to what the United States had waived their sovereign immunity involving. The present case involves the government instigating Notice of Deficiency procedures against five Petitioners of which only 4 were involved in the LaRue waiver case.

In the *Anderson* case this man had been labeled a bill of attainder as a "prolific filer" in this Court and by this Court. He had in the last three years proceeding this decision, filed 22 separate petitions and motions, including 3 petitions for certiorari, 6 motions for reconsideration, and 13 petitions for extraordinary writs. No statutory definition gave guidance to this Court that these facts, even if true, equaled some statutory definition of prolific filer. Thirteen of his petitions and motions had been filed in one Term. This Court denied all of the petitions and motions without recorded dissent. This Court also denied Anderson leave to proceed in forma pauperis, pursuant to Rule 39.8, on the last three occasions that he had submitted petitions for extraordinary relief. *In Re Anderson*, 511 U.S. 364, 365 (1994) This Court's punishment though only made Anderson pay what the Court was selling to him and everyone else.

Although, what *Mack* did to the District Court somewhere in Wisconsin, appears on its face absurd, nothing Mack did arose to the facts of Anderson and nothing the Seventh Circuit says in *Mack* followed this Court's direction in Anderson. Saying this, Petitioners in most cases have been involved in one case as a Plaintiff, and this case as a Petitioner, after arbitrary Deficiency procedures were instigated against all Petitioners by the Commissioner. With the exception of Brian Hilvety being involved in three cases in the last 5 years two as a Plaintiff and one responding with disgust regarding the deficient Notice of Deficiency at issue herein, all other Petitioners have only been involved in two or one case. That's it.

And the Seventh Circuit demands Petitioners be treated like Anderson and Mack. Can you believe this?

The diesel engine of the Seventh Circuit in "*Mack*" is a 18 wheeler running down hill and it has no breaks, no wheels and no tires. It must be turned off and disassembled or soon Citizens will be so limited as to bringing complaints that they will be afraid to be wrong and lose their right to complain unless and until they pay the new filing fee of thousands of dollars which is unregulated and unauthorized by any law enacted by any Congress of the United States.

## CONCLUSION

Petitioners respectfully request this Court, after it fully considers this Petition, direct the government to explain itself, enter an order reviewing this Case upon Writ of Certiorari and find Petitioners were denied due process regarding the Notice of Deficiency procedures according to the direct language of 26 U.S.C. § 6211, 6212 and 6213 and that sanctions be reversed and the Mack order illegal.

Respectfully Submitted

Brian L. Hilvety, Tammy A. Hilvety,

Mark Hilvety Beverly R. Hilvety

February 28, 2002

UNITED STATES TAX COURT

Ruth Hilvety, Deceased.

Petitioner, No. 2584-99

C.I.R.,

Respondent.

ORDER AND DISMISSAL AND DECISION

On July 26, 2000, we ordered the heirs at law of petitioner to file a written report with this court stating whether anyone has been appointed as executor or administrator of the estate of petitioner Ruth Hilvety or has been otherwise appointed to represent the estate of petitioner Ruth Hilvety. A report by Annette Ogden was filed on August 14, 2000 and a Report by Brian Hilvety and Mark Hilvety was filed on August 22, 2000. In her report, Annette Ogden stated that she was unaware of anyone being appointed to represent the estate of petitioner Ruth Hilvety and that she has executed a full disclaimer of all rights in Ruth Hilvety's estate and does not wish to pursue this case on behalf of petitioner Ruth Hilvety. Brian and Mark Hilvety also stated that they were not aware of an administrator or executor being appointed to represent petitioner Ruth Hilvety in this case.

Respondent's Motion to Dismiss for Lack of Prosecution was filed on September 26, 2000. On September 27, 2000, we issued an Order that the heirs at law of petitioner should show cause in writing why respondent's motion should not be granted. No response was received by the heirs at law. Accordingly, it is ORDERED that this Court's Order to show cause issued August 9, 2000, is hereby discharged. It is further ORDERED that the Court's Order to show cause dated September 27, 2000 is made absolute and respondent's Motion to Dismiss for Lack of Prosecution is granted and this case is dismissed for lack of prosecution. It is

further ORDERED AND DECIDED that there deficiencies and additions to tax due form petitioner as follows:

| | | Addtions to Tax I.R.S. Sections | | |
|---|---|---|---|---|
| Year | Deficiency | 6651(a)(1) | 6651(a)(2) | 6654 |
| 1993 | $ 23,551 | $ 5,887.75 | — | $ 986.78 |
| 1994 | $ 31,168 | $ 7,792 | — | $ 1,617.36 |
| 1995 | $ 36,097 | $ 9,024.25 | — | $ 1,957.28 |
| 1996 | $ 30,186 | $ 6,791.85 | $ 2,867.67 | $ 1606.64 |

It is further

ORDERED that in addition to regular service, the Clerk of the Court shall serve copies of this order on: Mark Hilvety, R.R. 2, Box 52A, Macon, Illinois 62544, Brian Hilvety, R.r. 2, Box 216, Moweaqua, Illinois 62550, and Annette Ogden, 2019 North 2700 East Road, Moweaqua, Illinois 62550.

Entered October 26, 2000. John O. Colvin, Judge

UNITED STATES TAX COURT

Tammy A. Hilvety,

Petitioner, No. 2588-99

C.I.R.,

Respondent.

ORDER AND DISMISSAL AND DECISION

This case was called from the calender of the Court's October 30, 2000, St. Louis, Missouri trial session. There was no appearance by or on behalf of petitioner. Instead, a Statement by petitioner under rule 50(C) was filed on October 30, 2000 in which Petitioner makes number frivolous claims. Respondent appeared and orally moved to dismiss this case for lack of prosecution.

Petitioner failed to file a Pre-Trial memorandum, as required by the Standing Pre-Trial Order. Respondent's proposed facts and evidence were deemed stipulated when the Court's August 9, 2000, Order to Show Cause Under Rule 91(f) was made absolute. Petitioner's contentions are totally lacking in merit. Based on the foregoing, it is

ORDERED that respondent's oral motion to dismiss this case for lack of prosecution is granted and this case is dismissed for lack of prosecution. It is further

ORDERED AND DECIDED that there are deficiencies in income tax and additions to tax due from the petitioner as follows:

| Year | Deficiency | Addtions to Tax I.R.S. Sections 6651(a)(1) | 6654 |
|---|---|---|---|
| 1993 | $ 461 | $ 112.25 | $ -0- |
| 1994 | $ 784 | $ 196 | $ 40.65 |
| 1995 | $ 291 | $ 100 | $ -0- |
| 1996 | $ 197 | $ -0- | $ -0- |

Entered January 17, 2001 John O. Colvin Judge

UNITED STATES TAX COURT

Brian L. Hilvety,

Petitioner, No. 2622-99

C.I.R.,

Respondent.

ORDER AND DISMISSAL AND DECISION

This case was called from the calender of the Court's October 30, 2000, St. Louis, Missouri trial session. There was no appearance by or on behalf of petitioner. Instead, a Statement by petitioner under rule 50(C) was filed on October 30, 2000 in which Petitioner makes number frivolous claims. Respondent appeared and orally moved to dismiss this case for lack of prosecution.

Petitioner failed to file a Pre-Trial memorandum, as required by the Standing Pre-Trial Order. Respondent's proposed facts and evidence were deemed stipulated when the Court's August 9, 2000, Order to Show Cause Under Rule 91(f) was made absolute. Petitioner's contentions are totally lacking in merit. Based on the foregoing, it is

ORDERED that respondent's oral motion to dismiss this case for lack of prosecution is granted and this case is dismissed for lack of prosecution. It is further

ORDERED AND DECIDED that there are deficiencies in income tax and additions to tax due from the petitioner as follows:

| | | Addtions to Tax I.R.S. Sections | | |
|---|---|---|---|---|
| Year | Deficiency | 6651(a)(1) | 6651(a)(2) | 6654 |
| 1993 | $ 2,436 | $ 609.00 | — | $ 103.00 |
| 1994 | $ 4,330 | $ 1,060.25 | — | $ 219.54 |
| 1995 | $ 2854 | $ 712.50 | — | $ 154.52 |
| 1996 | $ 3519 | $ 775.13 | $ 327.28 | $ 182.93 |

Entered January 17, 2001 John O. Colvin Judge

UNITED STATES TAX COURT

Mark Hilvety,

Petitioner, No. 2682-99

C.I.R.,

Respondent.

ORDER AND DISMISSAL AND DECISION

This case was called from the calender of the Court's October 30, 2000, St. Louis, Missouri trial session. There was no appearance by or on behalf of petitioner. Instead, a Statement by petitioner under rule 50(C) was filed on October 30, 2000 in which Petitioner makes number frivolous claims. Respondent appeared and orally moved to dismiss this case for lack of prosecution.

Petitioner failed to file a Pre-Trial memorandum, as required by the Standing Pre-Trial Order. Respondent's proposed facts and evidence were deemed stipulated when the Court's August 9, 2000, Order to Show Cause Under Rule 91(f) was made absolute. Petitioner's contentions are totally lacking in merit. Based on the foregoing, it is

ORDERED that respondent's oral motion to dismiss this case for lack of prosecution is granted and this case is dismissed for lack of prosecution. It is further

ORDERED AND DECIDED that there are deficiencies in income tax and additions to tax due from the petitioner as follows:

| | | Addtions to Tax I.R.S. Sections | | |
|---|---|---|---|---|
| Year | Deficiency | 6651(a)(1) | 6651(a)(2) | 6654 |
| 1993 | $ 23,551 | $ 5,887.75 | — | $ 986.78 |

| | | | | |
|---|---|---|---|---|
| 1994 | $ 31,168 | $ 7,792 | — | $ 1,617.36 |
| 1995 | $ 36,097 | $ 9,024.25 | — | $ 1,957.28 |
| 1996 | $ 30,186 | $ 6,791.85 | $ 2,867.67 | $ 1606.64 |

Entered January 17, 2001 John O. Colvin Judge

UNITED STATES TAX COURT

Beverly Hilvety,

Petitioner, No. 2589-99

C.I.R.,

Respondent.

ORDER AND DISMISSAL AND DECISION

This case was called from the calender of the Court's October 30, 2000, St. Louis, Missouri trial session. There was no appearance by or on behalf of petitioner. Instead, a Statement by petitioner under rule 50(C) was filed on October 30, 2000 in which Petitioner makes number frivolous claims. Respondent appeared and orally moved to dismiss this case for lack of prosecution.

Petitioner failed to file a Pre-Trial memorandum, as required by the Standing Pre-Trial Order. Respondent's proposed facts and evidence were deemed stipulated when the Court's August 9, 2000, Order to Show Cause Under Rule 91(f) was made absolute. Petitioner's contentions are totally lacking in merit. Based on the foregoing, it is

ORDERED that respondent's oral motion to dismiss this case for lack of prosecution is granted and this case is dismissed for lack of prosecution. It is further

ORDERED AND DECIDED that no deficiencies in income tax and no additions to tax under I.R.C. 6651(a)(1), 6651(a)920 or 6654 are due from, and no overpayments are due to the petitioner for the taxable years 1995 and 1996.

Entered January 17, 2001 John O. Colvin Judge

UNITED STATES COURT OF APPEALS
For the Seventh Circuit

Submitted October 12, 2001
Decided October 17, 2001

Hon. JOHN L. COFFEY, *Circuit Judge*
Hon. MICHAEL S. KANNE, *Circuit Judge*
Hon. DIANE P. WOOD, *Circuit Judge*

Nos. 01-2007, 01-2008, 01-2009 & 01-2010

TAMMY A. HILVETY, et al., Appeal from the U.S. Tax Court
*Petitioners-Appellants,*

*v.* Nos. 2582-99,2588-99,2589-99 & 2622-99

C.I.R.
*Respondent-Appellee* John O. Colvin *Judge*

**ORDER**

Brian, Mark, Tammy and Beverly Hilvety filed petitions in the tax court seeking redetermination of deficiencies and additions to tax. The Tax Court dismissed their petitions for want of prosecution and we affirm.

The taxpayers failed to file income tax returns for some or all of the years 1992 to 1996. The Commissioner issued notices of deficiency, and the taxpayers sought redetermination, each maintaining via separate petition that the Commissioner was "acting outside the limitation defined by the Sixteenth Amendment." The cases were later consolidated. Prior to trial, the taxpayers refused to stipulate to the Commissioner's proposed facts, and in response to the tax court's order to show cause why those facts should not be deemed admitted, the taxpayers invoked the Fifth Amendment

privilege against self-incrimination. The taxpayers ultimately failed to appear at trial; instead they filed a join statement consisting of standard tax protestor arguments. The Commissioner moved to dismiss the petitions for failure to prosecute. The tax court granted the motion concluding that the taxpayer had failed to comply with an order directing them to submit a pretrial memorandum and had failed to stipulate to the Commissioner's proposed facts. The court further noted that the taxpayers' contentions were "totally lacking in merit" and that the statement they filed in lieu of appearing at trial contained "numerous frivolous claims." The tax court upheld the deficiencies and additions to tax with respect to Brian, Mark, and Tammy; as for Beverly, the court determined that she owed no tax or additions to tax.

We first turn to the appeal of Beverly. The tax court concluded that Beverly owed no tax or additions to tax. This decision was favorable to Beverly, so we lack jurisdiction to review her appeal. *See W.W. Windle Co. v, Commissioner* 550 F.2d 43, 45-46(1st Cir. 1977); *see also Pollution Control Indus of Am., Inc. v. Van Gundy* 979 F.2d 1271, 1273(7thcir. 1992(party generally may not appeal order entered in that party's favor).

That leaves Brian, Mark, and Tammy, who collectively argue that the tax court abused its discretion in dismissing their petitions. Their argument rests on the belief that the Commissioner was required to prove that they owed income taxes, and because the Commissioner did not cite a statutory provision imposing a tax on them, the Commissioner failed to sustain his burden. In the taxpayers' view, fault lies with the Commissioner, who they say failed to prosecute. This argument is frivolous. Deficiency determinations are presumed correct, and the taxpayers bear the burden of proving otherwise. *Pittman v. Commissioner*, 100 F.3d 1308, 1313(7th Cir. 1996). The taxpayer, however, presented no evidence to sustain their burden, resorting instead to a blanket invocation of the Fifth Amendment. *See United States v. Oliver*, 505 F.2d 301, 308(7th cir. 1974)("[T]he Fifth Amendment has no

application to the statutory requirement that every citizen must report his entire income even if a taxpayer is thereby compelled to disclose an incriminating fact.") *overruled on other grounds by United States v. Fitzgerald*, 545 F.2d 578(7th Cir. 1976) The taxpayers refused to participate meaningfully in the proceedings they themselves initiated and, when they did participate, raised only frivolous arguments in support of their petitions. On this record we cannot conclude that the tax court abused its discretion in dismissing the taxpayers' petition. *See Sauers v. Commissioner*, 771 F.2d 64, 66-67(3rd Cir. 1985)(affirming dismissal where taxpayer refused to stipulate to proposed facts, presented no evidence, and raised only frivolous arguments).

On to the issue of sanctions. The Commissioner has moved for sanctions against the taxpayer under rule 38 of the Federal Rules of Appellate Procedures for filing frivolous appeals. We agree with the Commissioner that these appeals are frivolous. We therefore grant the Commissioner's motion and impose sanctions of $ 2000 against each taxpayer, Tammy Hilvety, no. 01-2007, Beverly Hilvety, no 01-2008, Brian Hilvety, 01-2009, and Mark Hilvety, no 01-2010. *See Cohn v. Commissioner*, 101 F.3d 486(7th Cir. 1996(per curiam). This sanction and any other outstanding sanction imposed by any court within this circuit, *see Hilvety v. World Power Sports, Inc.*, no. 00-4113, 2001 WL 776205(7th Cir. July 6, 2001);*LaRue v. United States*, 959 F.Supp.959(CD Ill 1997), must be paid within 30 days of this order, and if not paid in full by then, a *Mack* order restricting further litigation will be entered. *Support Sys. Int'l v. Mack*, 45 F.3d 185(7th Cir. 1995)(per curiam).

The appeal of Beverly Hilvety is Dismissed, the judgment of the tax court with respect to Brian, Mark and Tammy Hilvety is AFFIRMED, and the Commissioner's motion for sanctions is GRANTED.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit

December 12, 2001

Hon. JOHN L. COFFEY, *Circuit Judge*
Hon. MICHAEL S. KANNE, *Circuit Judge*
Hon. DIANE P. WOOD, *Circuit Judge*

Nos. 01-2007, 01-2008, 01-2009 & 01-2010

TAMMY A. HILVETY, et al., Appeal from the U.S. Tax Court
*Petitioners-Appellants,*

*v.* Nos. 2582-99,2588-99,2589-99 & 2622-99

C.I.R.
*Respondent-Appellee* John O. Colvin *Judge*

**ORDER**

On October 17, 2001, this court sanctioned Tammy Hilvety, Beverly Hilvety, Brian Hilvety and Mark Hilvety, $ 2000 in Hilvety v. Commissioner, Nos. 01-2--7, 01-2008, 01-2009, and 01-2010, for filing frivolous appeals. These sanctions were to be paid to the clerk of this Court on or before November 16, 2001, but appellants have failed to pay the sanctions.

Accordingly, IT IS ORDERED that the clerks of all federal courts in this circuit are directed to return unfiled any papers submitted either directly or indirectly by or on behalf of Tammy Hilvety, Beverly Hilvety, Brian Hilvety, and Mark Hilvety, unless and until they pay in full the sanctions that have been imposed against them in this case, in addition to any other outstanding sanction imposed by any court within this circuit(e.g. Hilvety v. World Power Sports, Inc., No. 00-4113, 2001 WL 776205 (7th Cir.

July 6, 2001); LaRue v. United States, 959 F.Supp 959 (CD Ill. 1997)). See Support Systems Int'l Inc. v. Mack, 45 F.3d 185, 186(7th Cir. 1995)(per curiam). In accordance with our decision in Mack, exceptions to this filingbar are made for criminal cases and for applications for writ of habeas corpus. See id at 186-87

IT IS FURTHER ORDERED that Tammy Hilvety, Beverly Hilvety, Brian Hilvety and Mark Hilvety are authorized to submit to this court, no earlier than two years from the date of this order, a motion to modify or rescind this order.

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON D.C.20543-0001

January 29, 2002

Mr. Brian Hilvety
RR # 2
Box 216
Moweaqua, Il. 62550

Re: Tammy A. Hilvety, Brian Hilvety, Mark Hilvety and
Beverly Hilvety v. Commissioner of Internal Revenue
Application No. 01A568

Dear Mr. Hilvety:

The Application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Stevens, who on January 29, 2002, extended the time to and including March 1, 2002.

This letter has been sent to those designated on the attached notification list.

Sincerely,

William K. Suter
By Clayton R. Higgins, Jr.
Assistant Clerk.